

# FAX transmission

**DATE:** May 11, 1995**FROM:** HARRY BOADWEE

■ FENWICK & WEST  
Two Palo Alto Square  
Palo Alto, CA 94306  
(415) 858-7188  
(415) 424-0859 Fax

**TO:** Mr. Preston Green  
America Online, Inc. (703) 448-9164

**Please deliver copies to Sheila Burke, Esq.  
and Paul Baker, Esq.**

Ms. Sharnette Smith  
America Online, Inc. (703) 506-1942

**Please deliver copies to Mr. Bill Dunn, Mr. Len  
Leader, and Mr. Miles Gilburne**

Christopher Younger, Esq. (415) 496-4092  
Wilson, Sonsini, Goodrich & Rosati, P.C.

**Please deliver a copy to Allen L. Morgan, Esq.**

WAIS Inc. (415) 356-5444

**Please deliver a copy to Mr. Brewster Kahle  
(WAIS, Inc.) and Mr. David Kaiser (Websoft)**

**NO. PAGES:** 9 (including cover page)

**ACCOUNT NO.:** 19649-00100

■ **Message:**

Attached are the draft management representation letters requested by Ernst & Young LLP from each of AOL and WAIS. Please send any comments to me at your earliest convenience.

**IF YOU DO NOT RECEIVE THE CORRECT NUMBER OF PAGES, OR IF THEY ARE NOT CLEAR, PLEASE CALL THE SENDER AT (415) 858-7188 OR SUE BRODSKY AT (415) 494-0600, EXT. 488.** The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above or their designee. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

**ERNST & YOUNG LLP**

Internal Correspondence

Washington Field Office  
Fairfax Square Tower II  
8075 Leesburg Pike  
Vienna, VA 22182  
(703) 903-5000

**FAX Coversheet**Date: 5/10/95FAX No.: 415-494-1417

To: Harry Boardman  
Office/  
Company: FENWICK AND WEST

From: Pete Bury

Comments: \_\_\_\_\_

Attached please find the America Online  
AND WAIS management representation letters  
we will need relative to the pooling  
transaction. Please call me at 703-903-5166  
with my comments.

Number of pages (including cover sheet): 8

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Fax number: (703) 903-5200

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May \_\_, 1995

Ernst & Young LLP  
8075 Leesburg Pike  
Fifth Floor, Tower II  
Vienna, VA 22182

America Online, Inc. (AOL) entered into an Agreement and Plan of Reorganization (the Agreement) dated May \_\_, 1995, with shareholders of Wide Area Information Servers, Inc. (WAIS or the Company). Subject to certain customary conditions, AOL will issue \_\_\_\_\_ shares of its Common Stock in exchange for 100% of the outstanding shares of common stock and common stock options of WAIS.

The transaction with AOL will be treated for accounting purposes as a "pooling of interest" in conformity with the requirements of Accounting Principles Board (APB) Opinion No. 16. The criteria for the "pooling of interests" method of accounting and their relevance to this exchange are outlined below.

#### **Attributes of the Combining Companies**

WAIS was incorporated in 1992 and has never been a subsidiary or division of another corporation. At the date of initiation of the plan or combination, WAIS had no investment in AOL and has not acquired any investment in AOL to date. AOL has no investment in WAIS.

#### **Manner of Combining Interests**

The combination is to be effected in a single transaction on or about May \_\_, 1995. Management believes that the common stock to be issued in the combination is authorized but unissued common stock of AOL with rights identical to those of the currently outstanding shares as described in the Articles of Incorporation. The Agreement contains a Registration Rights Agreement which requires AOL to use its best efforts to register the shares issued WAIS within one year of the effective date of the merger. If not registered within one year by AOL, upon written request of the shareholders of WAIS, AOL will be required to use its best efforts to register such shares. The Agreement does not place any contractual restrictions or limitations on the transferability or voting rights of the AOL common stock issued in connection with the transaction.

Within the past two years WAIS has not changed the equity interest of the voting common stock in contemplation of effecting the business combination. WAIS will not effect such a transaction prior to consummation of the business combination.

In September 1994, WAIS established its 1994 stock option plan. All options issued under the plan were granted to retain and motivate existing employees and not in contemplation of the pooling of interests with AOL. It was WAIS management's intention to grant such options to all employees upon beginning employment with WAIS, although the actual granting of such options was not final until approval was obtained by the WAIS Board of Directors which occurred on January 9, 1995.

The accelerated vesting period related to the options granted to Nicholas Scharf, Vice President and Chief Financial Officer of WAIS, was done for reasons relative to WAIS's original agreement to compensate Mr. Scharf in part with common stock for consulting services provided to the Company. Upon becoming a full-time employee of WAIS, WAIS and Mr. Scharf agreed to substitute the receipt of actual shares of common stock for common stock options with accelerated vesting. Therefore, the accelerated vesting period placed on common stock options given to Mr. Scharf was performed for valid business reasons in relation to his prior consulting services and not in contemplation of the pooling of interests with AOL.

The exchange ratio of \_\_\_ shares of AOL for 1 share of WAIS is applicable to all common stockholders of WAIS and, consequently, the stockholders' relative position within WAIS will remain the same. All WAIS common stock options outstanding will convert to common stock options of AOL at the same conversion ratio and with equivalent terms.

There have been no cash payments to shareholders for two years prior to the consummation of the pooling of interests, other than normal compensation, which could be considered extra dividends and an alteration of equity interests which violate the pooling of interests accounting under APB 16.

The \$500,000 secured note with AOL is at a reasonable rate of interest relative to commercially available loans and was executed for valid business reasons not in contemplation of the pooling of interests.

All liabilities specifically addressed under Section 10.2 of the Agreement relate to liabilities that existed prior to the consummation of the pooling and provide for the sharing of rights and risks arising after consummation and are not earnings or market price contingency agreements which would violate pooling of interests accounting under APB 16.

The voting rights granted by the provisions of the common stock in the resulting combined corporation will be fully exercisable by the stockholders.

The combination will be resolved at the date of the combination is consummated, and no provisions relating to the issuance of securities or other consideration will be pending.

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May \_\_, 1995**Absence of Planned Transactions**

The following transactions are not provided for in the Agreement and the combining companies, after the consummation of the combination and acting as the combined company, do not intend and have not agreed to effect any of the following transactions:

- a. Retire or reacquire, directly or indirectly, all or part of the common stock issued to effect the combination.
- b. Enter into financial arrangements for the benefit of the stockholders of a WAIS.
- c. Dispose of a significant part of the assets of the combining companies within two years the combination, other than disposals in the ordinary course of business of the formerly separate companies and to eliminate duplicate facilities or excess capacity.

The foregoing is based on facts and conditions known by WAIS at the date of this letter. AOL and WAIS have not agreed, and do not intend to agree, to any event that would change the criteria between the date of this letter and the date of consummation of the plan. If however, any events occur during the period from the date of this letter to the consummation of the plan that could bear on the pooling of interests treatment, we will notify you.

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Brewster Kahle  
President

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Nicholas M. Scharf  
Vice President and Chief Financial  
Officer

May \_\_, 1995

Ernst & Young LLP  
8075 Leesburg Pike  
Fifth Floor, Tower II  
Vienna, VA 22182

America Online, Inc. (AOL or the Company) entered into an Agreement and Plan of Reorganization (the Agreement) dated May \_\_, 1995, with shareholders of Wide Area Information Servers, Inc. (WAIS). Subject to certain customary conditions, the Company will issue \_\_\_\_\_ shares of its Common Stock in exchange for 100% of the outstanding shares of common stock and common stock options of WAIS.

The transaction with WAIS will be treated for accounting purposes as a "pooling of interest" in conformity with the requirements of Accounting Principles Board (APB) Opinion No. 16. The criteria for the "pooling of interests" method of accounting and their relevance to this exchange are outlined below.

#### Attributes of the Combining Companies

AOL was incorporated in 1985 and has never been a subsidiary or division of another corporation. WAIS was incorporated in 1992 and has never been a subsidiary or division of another corporation. At the date of initiation of the plan or combination, AOL had no investment in WAIS and AOL has not acquired any investment in WAIS to date, and to the best of our knowledge WAIS has no investment in AOL.

#### Manner of Combining Interests

The combination is to be effected in a single transaction on or about May \_\_, 1995. The common stock to be issued in the combination is authorized but unissued common stock of AOL with rights identical to those of the currently outstanding shares as described in the Articles of Incorporation. The Agreement contains a Registration Rights Agreement which requires AOL to use its best efforts to register the shares issued WAIS within one year of the effective date of the merger. If not registered within one year by AOL, upon written request of the shareholders of WAIS, AOL will be required to use its best efforts to register such shares. The Agreement does not place any contractual restrictions or limitations on the transferability or voting rights of the AOL common stock issued in connection with the transaction.

In November 1994 and April 1995, the Company completed 2 for 1 stock splits which were executed in the form of a stock dividend. The stock dividend was issued to effect the stock split and without consideration. Such action was taken to increase the number of outstanding shares for purposes of effecting a reduction in the unit market price and, thereby, obtaining a wider distribution and improved marketability of AOL's shares.

In November and December 1994 the Company issued shares of its common stock to purchase all of the issued and outstanding common stock of Booklink Technologies, Inc., and Navisoft. In addition, in February 1995, the Company issued shares of its common stock, and cash, to acquire all of the issued and outstanding stock of ANS CO+RE and substantially all of the assets of Advanced Network and Services, Inc. (a non-profit entity). All acquisitions were executed for purposes of acquiring internet and network backbone related technology/equipment and were not performed in contemplation of the pooling of interests with WAIS.

During March 1995 the Company entered into a 50/50 joint venture with Bertelsmann, A.G., whereby Bertelsmann will contribute up to \$100 million into the venture to fund the expansion of the Company's online service into Europe as well as making a \$50 million equity investment in AOL representing ~5% of the then outstanding shares. These transactions were entered into for valid business reasons (i.e. expand the subscriber base, expand the Company's service abroad, and to provide additional equity to AOL).

The \$500,000 secured note with WAIS is at a reasonable rate of interest relative to commercially available loans and was executed for valid business reasons not in contemplation of the pooling of interests.

The granting of stock options under AOL's option plans during fiscal 1995 were in the ordinary course of business with terms and conditions consistent with options issued during fiscal 1992 and 1993 and were not in contemplating the pooling of interests with WAIS. Options issued to officers during FY 95 were issued to ensure the longevity of the existing management team, and in recognition of the Company's past performances (meeting revenue and subscription goals and projected strength of future earnings).

All new AOL options issued to WAIS employees are consistent in amount and terms, with those issued to all other new AOL employees and were not issued as additional consideration in contemplation of the pooling of interests.

Within the past two years, neither AOL nor WAIS changed the equity interest of the voting common stock in contemplation of effecting the business combination. Neither AOL nor WAIS will effect such a transaction prior to consummation of the business combination.

Based upon management's understanding of stock option activity at WAIS for the two years prior to the consummation of the pooling of interests, all options were issued for valid business reasons and not in contemplation of the pooling of interests for the following reasons:

- In September 1994, WAIS established its 1994 stock option plan. All options issued under the plan were granted to retain and motivate existing employees and not in contemplation of the pooling of interests with AOL. It was WAIS management's intention to grant such options to all employees upon beginning employment with WAIS, although the actual granting of such options was not final until approval was obtained by the WAIS Board of Directors on January 9, 1995.

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May \_\_, 1995

- The accelerated vesting period related to the options granted to Nicholas Scharf, Vice President and Chief Financial Officer of WAIS, was done for reasons relative to WAIS's original intention to compensate Mr. Scharf in part with common stock for consulting services provided to the Company. Upon becoming a full-time employee of WAIS, WAIS and Mr. Scharf agreed to substitute actual common stock for common stock options with accelerated vesting. Therefore, the accelerated vesting period placed on common stock options given to Mr. Scharf was performed for valid business reasons in relation to his prior consulting services and not in contemplation of the pooling of interests with AOL.

The exchange ratio of \_\_\_ shares of AOL for 1 share of WAIS is applicable to all common stockholders of WAIS and, consequently, the stockholders' relative position within WAIS will remain the same. All WAIS common stock options outstanding will convert to common stock options of AOL at the conversion rate and with equivalent terms.

The voting rights granted by the provisions of the common stock in the resulting combined corporation will be fully exercisable by the stockholders.

The combination will be resolved at the date of the combination is consummated, and no provisions relating to the issuance of securities or other consideration will be pending.

#### **Absence of Planned Transactions**

The following transactions are not provided for in the Agreement and the combining companies, after the consummation of the combination and acting as the combined company, do not intend and have not agreed to effect any of the following transactions:

- a. Retire or reacquire, directly or indirectly, all or part of the common stock issued to effect the combination.
- b. Enter into financial arrangements for the benefit of the former stockholders of WAIS.
- c. Dispose of a significant part of the assets of the combining companies within two years the combination, other than disposals in the ordinary course of business of the formerly separate companies and to eliminate duplicate facilities or excess capacity.

The foregoing is based on facts and conditions known by AOL and WAIS at the date of this letter. AOL and WAIS have not agreed, and do not intend to agree, to any event that would change the criteria between the date of this letter and the date of consummation of the plan. If however, any events occur during the period from the date of this letter to the consummation of the plan that could bear on the pooling of interests treatment, we will notify you.

**Ernst & Young LLP**

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**May \_\_, 1995**

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**Lennert J. Leader**  
**Senior Vice-President**  
**and Chief Financial Officer**

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**Steve Case**  
**President and CEO**